

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Gary and Kathryn Tenaglia,
Debtors.

Case No. 05-40185
Chapter 7

Community Central Bank,
Plaintiff,

Adv. Pro. 05-4895

v.

Gary P. Tenaglia, Kathryn A. Tenaglia,
Scott M Simmons, and Butala Simmons
Camilleri & Pate P.C.,
Defendants.

Opinion Regarding Jurisdiction over Co-Defendants

This matter is before the Court on a motion to dismiss the claims against Butala Simmons Camilleri & Pate, P.C. and Scott Simmons for lack of jurisdiction. Following a hearing on May 8, 2006, the Court took the matter under advisement. The Court now concludes that it does not have jurisdiction and therefore grants the motion to dismiss

I.

Gary and Kathryn Tenaglia filed a voluntary chapter 7 bankruptcy petition on January 4, 2005. On March 25, 2005, Community Central Bank filed a complaint seeking to find the debt owed it nondischargeable pursuant to 11 U.S.C. § 523. On August 24, 2005, Community Central amended its complaint adding counts against BSCP and Simmons. On October 17, 2005, Community Central filed its

Second Amended Complaint. Central Community asserts fraud counts against BSCP and Simmons, alleging that BSCP and Simmons assisted the Tenaglias in defrauding the bank by creating false financial statements. On November 2, 2005, BSCP and Simmons filed answers to the Second Amended Complaint denying all allegations of wrongdoing.

On January 19, 2006, the Tenaglias filed a motion to stay the action. The Tenaglias are the subject of a criminal investigation and requested the stay because they intend to invoke their Fifth Amendment rights. The Court held a hearing on March 2, 2006. At the hearing, the Court granted the stay as to the Tengalias. However, the Court raised the issue of jurisdiction regarding the co-defendants.

BSCP and Simmons filed the present motion to dismiss on March 16, 2006. Community Central filed a response on March 26, 2006.

II.

28 U.S.C. § 1334(b) provides, in relevant part:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b).

The Supreme Court, in *Celotex Corp. v. Edwards*, 514 U.S. 300, 307-09, 115 S. Ct. 1493, 1499, 131 L. Ed.2d 403 (1995), has noted that the “related to” jurisdiction of a bankruptcy court is “comprehensive” but not “limitless.” It does extend to suits between non-debtor parties, but only if the action has “an effect on the bankruptcy estate.” *Id.* at 308 n. 5, 115 S. Ct. at 1499 n. 5. There must be some nexus between the action

and the debtor's bankruptcy case. *Dow Corning Corp.*, 86 F.3d at 489. The existence of common questions of fact alone is insufficient to give rise to "related to" jurisdiction. *Id.*

Beneficial Nat'l Bank v. Best Reception Sys. (In re Best Reception Sys., Inc.), 220 B.R. 932, 944 (Bankr. E.D. Tenn. 1998).

The definition of a "related" proceeding under Section 1334(b) was first articulated by the Third Circuit in *Pacor*. As stated in that case, the "usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor*, 743 F.2d at 994. An action is "related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.* A proceeding "need not necessarily be against the debtor or against the debtor's property" to satisfy the requirements for "related to" jurisdiction. *Id.* However, "the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section [1334(b)]." *Id.* (stating also that "[j]udicial economy itself does not justify federal jurisdiction"). Instead, "there must be some nexus between the 'related' civil proceeding and the title 11 case." *Id.*

Our Circuit adopted the *Pacor* test for determining whether a civil proceeding is "related to" a bankruptcy proceeding under Section 1334(b) in *Robinson*, 918 F.2d at 583 (noting in doing so that circuit courts have "uniformly adopted an expansive definition of a related proceeding under section 1334(b)").

Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers Of Conn. (In re Dow Corning Corp.), 86 F.3d 482, 489 (6th Cir. 1996).

In *In re Dow Corning*, the Sixth Circuit held that due to the large number of claims with near certainty of contribution or indemnification claims, the bankruptcy court had related to jurisdiction over

disputes between non-debtor parties. However, the Circuit specifically noted, “A single possible claim for indemnification or contribution simply does not represent the same kind of threat to a debtor’s reorganization plan as that posed by the thousands of potential indemnification claims at issue here.” *Id.* at 494. “The Sixth Circuit has noted that generally, bankruptcy jurisdiction does not extend to actions between third parties because the action would not be ‘related to’ a bankruptcy proceeding.” *Best Reception Sys.*, 220 B.R. at 947 (citing *Sanders Confectionary Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 483 (6th Cir. 1992)).

In the present case, Community Central Bank asserts that its claim against Simmons and BSCP is related to the bankruptcy case because if either Simmons or BSCP is held jointly liable with the debtors, the debtors may have less liability, which may impact their bankruptcy estate. Community Central Bank cites several cases asserting that joint conduct is sufficient to establish related to jurisdiction. *See In re Dow Corning Corp.*, 86 F.3d 482; *Wood v. Wood (In re Wood)*, 825 F.2d 90 (5th Cir. 1987).

The Court concludes that Simmons and BSCP correctly argue that joint conduct alone is not sufficient to create “related to” jurisdiction. Rather, the test to determine whether related to jurisdiction exists is whether the outcome of the litigation will conceivably have an effect on the bankruptcy estate. Moreover, Simmons and BSCP properly note that there will be no effect on the bankruptcy estate because the estate is administratively insolvent and therefore the outcome of this litigation simply will not affect creditors’ distributions.

The cases cited by Community Central Bank for the proposition that joint conduct can create “related to” jurisdiction all involve contribution or indemnity claims. In the present case, Simmons and BSCP have not asserted indemnity or contribution claims in the bankruptcy case and the claims bar date

has passed. Furthermore, Simmons and BSCP have not stated any intention to file contribution or indemnity claims. Therefore, it does not appear that the outcome of the litigation will have any effect upon the bankruptcy estate. Accordingly, the Court holds that it does not have subject matter jurisdiction over Community Central Bank's claims against Simmons and BSCP, and those claims must be dismissed.

The Court will enter an appropriate order.

Not for Publication

Entered: June 12, 2006

/s/ Steven Rhodes
Steven Rhodes
Chief Bankruptcy Judge